

FILED

Clerk
District Court

JUN - 9 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

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Attorneys for Plaintiff Bernard Sikimour Phillip

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

Bernard Sikimour Phillip,)	CIVIL CASE NO. 05-
)	
Plaintiff,)	
)	AMENDED DECLARATION OF
vs.)	GEORGE L. HASSELBACK
)	
)	
U.S. SECRETARY OF STATE,)	
UNITED STATES OF AMERICA,)	
UNITED STATES IMMIGRATION AND)	
CUSTOMS ENFORCEMENT and)	
AVIATION SERVICES LTD., dba)	
FREEDOM AIR ,)	
)	
Defendants.)	

I, George L. Hasselback, declare under the penalty of perjury according to the laws of the Commonwealth of the Northern Mariana Islands and the United States of America, that the following is true and based upon my personal knowledge, except where noted otherwise, and if called to testify, I could do so competently:

1. In my capacity as attorney for Plaintiff Bernard Sikimour Phillip ("Mr. Phillip"), I instructed my office's accounting staff to prepare an itemized summary of the costs and attorney fees associated with my representation of Mr. Phillip in the above-captioned matter. A copy of this summary is attached hereto as "Exhibit A."

ORIGINAL

1 2. I have reviewed this summary and can verify that it accurately reflects the amount of time
2 billed by the various attorneys that have worked on Mr. Phillip's case. This time does not reflect
3 the full amount of time that was spent on the prosecution of Mr. Phillip's case.

4
5 3. This matter was initially brought to the attention of Mr. David Banes ("Mr. Banes"), a
6 partner in my firm, who assigned the case to me but remained available for consultation and
7 supervision of my work on this matter. Additionally, Mr. Joseph Horey ("Mr. Horey") also was
8 available for my consultation and supervised some of the work that I did on this matter. Mr.
9 Banes only recorded a portion of the time that he spent assisting me on this matter. The actual
10 time spent by Mr. Banes in consulting with me and reviewing my work on this case are far in
11 excess of the time that is reflected on this itemized statement.

12
13 4. I have reviewed this summary and can verify that it accurately reflects the various costs
14 associated with Mr. Phillip's representation.

15
16 5. Utilizing the standard billing rates for the attorneys who worked on this matter, the costs
17 and attorney fees associated with the prosecution of Mr. Phillip's case amount to \$18,142.90.

18
19 6. Utilizing the statutory billing rate under the Equal Access To Justice Act, the costs and
20 attorney fees associated with the prosecution of Mr. Phillip's case amount to \$12,278.90.

21
22 7. In the initial stages of my representation of Mr. Phillip, I was instructed by my client to
23 attempt to facilitate his travel from the CNMI to Guam on November 17, 2005 for a cultural
24 exchange trip sponsored by the Commonwealth's Man-Amko Center ("the Center"). Mr. Phillip
25 had desired to travel to Guam for this trip for many years, but without his U.S. Passport, he was
26 unable to do so. He expressed a concern that due to his failing health that this would be the last
27 year that he might be able to go.

1 8. On October 24, 2005, I contacted the Immigration section of the office of the CNMI
2 Attorney General. I was informed that the appropriate agency for questions regarding travel
3 from the CNMI to Guam would be the Guam office of United States Immigration and Customs
4 Enforcement ("ICE").

5
6 9. Later that day, I contacted ICE and asked to speak with one of their agents on duty. I was
7 transferred to an "Officer Sablan." I explained the situation regarding Mr. Phillip to Officer
8 Sablan, and he informed me that while a United States passport is the "preferred" method of
9 identification that U.S. citizens may use when traveling to Guam, that alternate documentation
10 might be used. He and I spoke at length regarding what type of documentation would be
11 sufficient for Mr. Phillip, and Officer Sablan seemed conversant with the requirements under §
12 301(b) of the Covenant to qualify for United States Citizenship. He put me on hold so that he
13 could confer with a supervisor and when he spoke with me again, he said that the documentation
14 that I described was sufficient to allow Mr. Phillip to enter Guam. Finally, he told me that the
15 individual airlines were charged with assessing the sufficiency of such documentation prior to
16 boarding any passenger.

17
18 10. That same day, I contacted a "Mr. Palacios" at the Man-Amko Center to determine
19 which airline would be transporting Mr. Phillip to Guam. He informed me that it would be
20 Freedom Air.

21
22 11. On October 25, 2005, I called Freedom Air and spoke with Ms. Bodie (sp?). She
23 informed me that if Freedom Air boarded a person that ICE did not approve of, they would be
24 fined \$3000.00. For this reason, she informed me that Freedom Air would not accept Mr. Phillip
25 unless he had a U.S. passport. I explained that ICE confirmed that he could be admitted with
26 alternate documentation, but she said that Freedom Air would require something in writing from
27 ICE that this documentation was sufficient, or Mr. Phillip would not be boarded, absent a U.S.
28 passport.

1
2 12. I immediately called ICE again and spoke with Officer Sablan. He said that they would
3 not produce anything in writing, but that I should fax over Mr. Phillip's documents and that he
4 would confer with his supervisor to make sure that everything was in order.

5
6 13. On October 26, 2005, I followed-up with ICE and found that Officer Sablan was off-
7 duty. I asked to speak to the supervisor with which he confirmed the sufficiency of Mr. Phillip's
8 documents and was transferred to an individual with whom I had not previously spoken. She
9 turned out to be the wrong supervisor and told me that the correct one, Ms. Lujan (sp?) was out
10 sick and suggested I call back the next day.

11
12 14. On October 27, 2005, I called back and spoke with Ms. Lujan. She did not seem familiar
13 with the facts of the case and took a moment to familiarize herself with the documents. I was
14 then put on speakerphone and she and another woman asked me several questions regarding Mr.
15 Phillip. I told her that there was a problem with his application for a passport and that we were
16 working that out, but wanted to get him to Guam for his trip. She kept returning to the fact that
17 he was not born in the CNMI (confusing the requirements of 301 (a) and (b) apparently). After a
18 while the other woman said, "put him on hold" and they did so.

19
20 15. Ms. Lujan got back on the phone and told me that after speaking with a "Mr. Rocky
21 Miner", the "port director" it was the position of ICE that Mr. Phillip would be denied entry into
22 Guam. I asked her to confirm that he could use some alternate documentation, and she said that
23 since the State Department was not issuing him a passport, ICE would not let him use alternate
24 documentation of his citizenship. I asked her what alternate documentation an individual such as
25 myself would need to travel to Guam from the CNMI and she asked where I was born. Upon
26 learning that I was born in the U.S., she said that I would only need a birth certificate and a photo
27 I.D., but that since Mr. Phillip was a citizen by way of the Covenant, he would need a U.S.
28

1 passport. She suggested I work with the liaison office in Guam for the Chuukese government
2 and try to get him some documentation that way.

3
4 16. Upon finding that Mr. Phillip would not be allowed to provide an alternate form of proof
5 for his citizenship, I drafted and considered filing a Motion For a Temporary Restraining Order
6 compelling the airlines and Guam ICE to allow Mr. Phillip to travel with alternate proof of his
7 citizenship. In the interests of resolving this amicably, I decided to contact CNMI Immigration
8 to see if I could facilitate Mr. Phillip's travel in any other way. They suggested that I contact the
9 United States Attorney on Guam.


10
11 17. I was able, through various channels and multiple phone calls taking hours of my time, to
12 coordinate between the FSM Consulate on Saipan (to confirm that Mr. Phillip was born on Chuuk
13 and therefore entitled to FSM citizenship), CNMI Immigration (for letters to CNMI Ports
14 Authority to allow Mr. Phillip to leave and return to the CNMI) and Guam ICE (to allow Mr.
15 Phillip entry into Guam) for Mr. Phillip to travel to Guam under a letter of passage from the
16 FSM consulate on Saipan. I was able to accomplish this approximately 48 hours before Mr.
17 Phillip was to leave. However, Mr. Phillip reported to me that the stress of the events leading up
18 to that point caused his gastric ulcer to begin to bleed and he was hospitalized and unable to
19 attend the trip.

20
21 18. In the interests of settling the issue of attorney fees without resorting to further
22 involvement from the Court, I directed my office's accounting staff to remove all of the hours
23 that I spent in the aforementioned arrangements for Mr. Phillip's trip to Guam and to re-calculate
24 the final cost of our representation. This amounted to \$15, 203.43 at our normal hourly rates and
25 \$10, 376.43 at the statutory rate under the EAJA. A copy of this re-calculation is attached hereto
26 as "Exhibit B."

1 19. During the course of my representation of Mr. Phillip, I have learned that he is retired and
2 living off of a limited and fixed income. Other than a meager income from social security and
3 some personal belongings, Mr. Phillip does not have any appreciable assets that would make him
4 ineligible for an award of fees and costs under the Equal Access To Justice Act.

5
6 20. Mr. Phillip is the prevailing party in the above-captioned case. A copy of the Order of
7 this Court incorporating the terms of the agreement between Mr. Phillip and the various
8 defendants that retained jurisdiction of this Court for the enforcement of that agreement is
9 attached hereto as "Exhibit C."

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11 Signed on Saipan, Commonwealth of the Northern Mariana Islands, this 2nd day of June, 2006:

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13 
14 George L. Hasselback